

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

20510  
JESSE W. GRIDER, CLERK

JUN 24 1993

U.S. DISTRICT COURT  
WEST'N. DIST. KENTUCKY

CIVIL ACTION NO.  
C-90-0695-L(J)

UNITED STATES OF AMERICA,

Plaintiff,

v.

BEN HARDY, et al.,

Defendants.

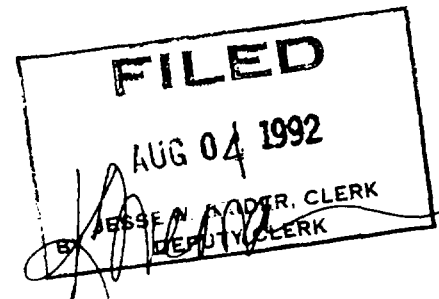
CONSENT DECREE

I.

BACKGROUND

WHEREAS, the United States of America ("United States") on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") filed on January 4, 1991, an Amended Complaint in this matter pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (hereinafter "CERCLA");

WHEREAS, in response to a release or a substantial threat of a release of a hazardous substance at or from the Lee's Lane Landfill ("the Site") in Jefferson County, Kentucky, the EPA conducted a response action pursuant to Section 104 of CERCLA;



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WHEREAS, EPA has incurred costs in conducting response actions at the Site and will continue to incur response costs with respect to the Site;

WHEREAS, the United States and certain Defendants named in the Amended Complaint desire to settle this matter;

WHEREAS, the Settling Defendants deny liability for those matters alleged in the Amended Complaint, and the entry of this Consent Decree shall not be construed as an admission of liability by Settling Defendants;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will avoid prolonged and complicated litigation among the Parties, that entry of this Consent Decree is in the public interest, and that the past response costs incurred by the Plaintiff in connection with the Site are consistent with the National Contingency Plan;

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II.

JURISDICTION

This Court has jurisdiction over the subject matter of these actions pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants who, for purposes of this Consent Decree, waive all objections and defenses that they may have to

jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

III.

PARTIES BOUND

The Consent Decree applies to and is binding upon the United States and upon the Settling Defendants, their employees and officers and their successors, assigns, contractors, and agents. Any change in ownership or corporate status of a Settling Defendant shall in no way alter such Settling Defendant's responsibility under this Decree.

IV.

DEFINITIONS

Unless noted to the contrary, the terms of this Consent Decree shall have the same meaning as terms defined in CERCLA. Whenever the following terms are used in this Consent Decree and the Appendices attached hereto, the following definitions specified in this Paragraph shall apply:

A. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

B. "EPA" means the United States Environmental Protection Agency.

C. "Future Response Costs" means any Response Costs which may be incurred by the Plaintiff in relation to the Site following lodging of this Consent Decree.

D. "MSD" means the Louisville and Jefferson County Metropolitan Sewer District.

E. "National Contingency Plan" or "NCP" means the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

F. "Parties" means the United States of America and the Settling Defendants.

G. "Past Response Costs" means all Response Costs incurred by the Plaintiff in connection with the Site prior to lodging of this Consent Decree.

H. "Plaintiff" means the United States of America.

I. "Response Costs" means any costs incurred by Plaintiff pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

J. "Settling Defendants" means those Defendants who sign this Consent Decree, and their successors and assigns.

K. "Site" means the "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), encompassing the property commonly know as Lee's Lane Landfill, where hazardous substances have been disposed of and otherwise have come to be located. The Site is located approximately 4.4 miles southwest of Louisville, Kentucky, in Jefferson County, and is adjacent to the Ohio River.

L. "United States" means the United States of America and its departments and agencies, including the United States Environmental Protection Agency.

V.

REIMBURSEMENT OF RESPONSE COSTS

1. Settling Defendants agree to reimburse the Plaintiff as provided herein for Past Response Costs. Within thirty (30) days of the entry of this Consent Decree, Settling Defendants shall pay to EPA the dollar amounts specified below in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and marked as relating to the Site, the civil action number of this matter, and the Department of Justice File No. 90-11-3-215, in reimbursement of Response Costs incurred by the United States:

<u>Settling Defendant</u>	<u>Amount Due</u>
Ford Motor Company	\$321,000
Dow Corning Corporation	\$321,000

The certified check(s) shall be forwarded to EPA-Region IV, Attention: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia, 30384. Copies of the check(s) and any transmittal letter(s) shall be sent to the United States.

VI.

STIPULATED PENALTIES AND INTEREST

2. If any Settling Defendant fails to comply with any requirement applicable to it in this Consent Decree, such Settling Defendant shall pay to EPA stipulated penalties in the

following amounts for each day of each and every violation of said requirements:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$ 3,000
15th through 30th day	\$ 6,000
Beyond 30 days	\$10,000

3. Except as otherwise provided in this Paragraph 3, stipulated penalties shall begin to accrue on the day that noncompliance occurs or on the day following the date that payment is due pursuant to Paragraph 1, and shall continue to accrue through the final day of correction of the noncompliance or the day that payment is received by EPA. With respect to any violation of Paragraph 14, stipulated penalties shall begin to accrue upon notification by the United States or EPA of noncompliance. Separate penalties shall accrue for each separate violation of this Consent Decree.

4.a. All penalties due to EPA under this Section shall be payable within thirty (30) days of receipt by the Settling Defendant of notification of noncompliance. Interest shall begin to accrue on the unpaid penalty balance at the end of the thirty-day period, at the rate specified in Subparagraph 4(c) below. A handling charge shall be assessed at the end of each thirty-day late period, and a six (6) percent per annum penalty charge shall be assessed if the penalty is not paid within ninety (90) days after it is due.

b. With respect to any outstanding payment obligation under Paragraph 1, Section V, except as otherwise specified

therein, interest shall accrue on the outstanding obligation beginning on the day after payment is due at the rate specified in Subparagraph 4(c) below. The interest due under this Subparagraph shall be in addition to any interest or charges assessed under Subparagraph 4(a).

c. All interest payable pursuant to this Consent Decree shall accrue at the rate equal to the yield fixed in the 52-week U.S. Treasury MK Bills purchased by the U.S. Treasury Department for investment of Superfund monies in September for the applicable fiscal year. For fiscal year 1989 (October 1, 1988, to September 20, 1989), the interest rate shall be 8.39%. Interest shall be compounded annually on October 1.

5. Stipulated penalties due to EPA shall be paid by certified check made payable to "EPA Hazardous Substance Superfund" and shall be mailed to EPA-Region IV, Attention: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia, 30384.

6. The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Plaintiff by reason or any Settling Defendant's failure to comply with the requirements of this Consent Decree.

#### VII.

##### COVENANTS NOT TO SUE BY PLAINTIFF

7. Past Response Costs. Subject to the reservations of rights in Paragraph 9 of this Section, the Plaintiff covenants not to sue Settling Defendants in any civil or administrative proceeding for reimbursement of Plaintiff's Past Response Costs.

This covenant not to sue shall take effect upon the receipt by Plaintiff of the payments required by Paragraph 1, Section V. This covenant not to sue is conditioned upon complete and satisfactory performance by Settling Defendants of their payment obligations under Paragraph 1, Section V, of this Consent Decree. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

8. Monitoring Activities and Operation and Maintenance.

a. Plaintiff has entered into an enforceable agreement with MSD for the performance of monitoring, operation, and maintenance work related to the Site. Plaintiff covenants not to sue Settling Defendants for the performance by MSD pursuant to said agreement and further covenants not to sue Settling Defendants for oversight costs which may be incurred by EPA in overseeing the work required pursuant to said agreement.

b. The covenants not to sue set forth in this Paragraph 8 shall take effect upon the receipt by Plaintiff of the payments required by Paragraph 1, Section V. These covenants not to sue are conditioned upon complete and satisfactory performance by Settling Defendants of their payment obligations under Paragraph 1, Section V, of this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

9. Reservation of rights. The Plaintiff reserves, and this Consent Decree is without prejudice to, all rights against each Settling Defendant with respect to all matters other than



those expressly specified in the covenants not to sue set forth in Paragraphs 7 and 8 of this Section, including but not limited to:

- (1) claims based on a failure by such Settling Defendant to meet a requirement of this Consent Decree;
- (2) claims for reimbursement of Future Response Costs, except as expressly provided in Paragraph 8 of this Section;
- (3) claims for injunctive relief for the performance of response actions except as expressly provided by Paragraph 8 of this Section;
- (4) claims for damages for injury to, destruction of, or loss of natural resources; and
- (5) any criminal liability.

10. Any claim or defense which any Settling Defendant may have against any person or entity, not a party to this Consent Decree, including, but not limited to, claims for indemnity or contribution, is expressly reserved. Except as expressly provided in Paragraph 8(a), nothing in this Consent Decree shall in any way limit the rights and defenses which may be available to any Settling Defendant in any action other than an action to enforce the provisions of this Consent Decree.

11. Notwithstanding any other provision of this Consent Decree, the Plaintiff retains all authority and reserves all rights to take any and all response actions authorized by law.

VIII.

CONTRIBUTION PROTECTION

12. Subject to the reservations of rights in Section VII, Paragraph 9, the Plaintiff agrees that by entering into and carrying out the terms of this Consent Decree, the Settling Defendants will have resolved their liability to the Plaintiff for those matters set forth in the covenants not to sue in Section VII, Paragraphs 7 and 8, pursuant to Section 113(f) of CERCLA, and shall not be liable for claims for contribution for those matters.

IX.

COVENANTS BY SETTLING DEFENDANTS

13. Settling Defendants hereby covenant not to sue the Plaintiff or its representatives for any claims related to or arising from this Consent Decree, including any direct or indirect claim for reimbursement from the Hazardous Substances Superfund established pursuant to Section 221 of CERCLA, 42 U.S.C. § 9631.

X.

COOPERATION AND RETENTION OF RECORDS

14. Settling Defendants agree to cooperate and assist the Plaintiff in the prosecution of this or any other actions relating to the Site against all persons or entities who are not parties to this Consent Decree. Settling Defendants' obligations of cooperation and assistance include, but are not limited to, naming and producing fact witnesses with knowledge relating to

the Site for interviews, depositions, and trial; waiving the subpoena requirements for the depositions and trial testimony of such witnesses; producing documents requested; and promptly responding to requests for information regarding those matters specified in Section 104(e)(2) of CERCLA. The benefit of said agreement by Settling Defendants shall extend only to Plaintiff and not to any other person. Nothing in this Paragraph shall be construed to limit or otherwise affect the exercise of Plaintiff's prosecutorial discretion or any of Plaintiff's authorities under Section 104(e) of CERCLA. Further, nothing in this Paragraph shall be construed to alter the scope of the covenants not to sue and reservations of rights set forth in Paragraphs 7 through 9, Section VII of this Consent Decree.

15. Until ten years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control that relate in any manner to the Site. After this document retention period, Settling Defendants shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall relinquish custody of the records or documents to the United States.

16. Nothing in this Section X shall be construed as a waiver of the attorney-client privilege or work product doctrine by any of the Parties to this Consent Decree.

XI.

NOTICES AND SUBMISSIONS

17. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals and the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any notice requirement of the Consent Decree with respect to the Parties hereto.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: DOJ # 90-11-3-215

and

Director, Waste Management Division  
United States Environmental Protection Agency,  
Region IV  
345 Courtland Street  
Atlanta, GA 30365

As to the Settling Defendants:

Ford Motor Company:

John R. Phillips, Esq.  
Ford Motor Company  
728 Parklane Towers East  
One Parklane Boulevard  
Dearborn, Michigan 48126-2493

Dow Corning Corporation:

David E. Dearing, Esq.  
Cromer, Eaglesfield & Maher, P.A.

1500 Market Tower  
10 West Market Street  
Indianapolis, IN 46204-2968

XII.

EFFECTIVE AND TERMINATION DATES

18. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

19. This Consent Decree shall terminate upon expiration of the ten-year document retention period specified in Section X. Termination of this Consent Decree shall not affect the covenants not to sue or the reservations of rights set forth in Section VII or the continuing obligations of Settling Defendants set forth in Section X.

XIII.

RETENTION OF JURISDICTION

20. This court will retain jurisdiction for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the modification of this Consent Decree or to effectuate or enforce compliance with its terms.

XIV.

MODIFICATION

21. No modification shall be made to this Consent Decree without written notification to and written approval of the Parties and the Court. The notification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Consent Decree shall

be effective. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

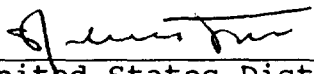
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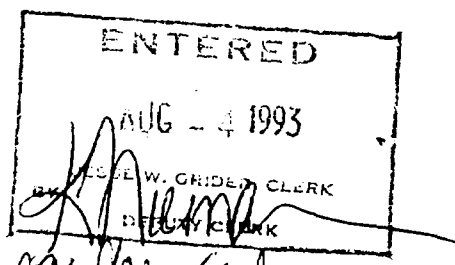
SIGNATORIES

22. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

23. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons, and any applicable local rules of this Court.

SO ORDERED THIS 4<sup>th</sup> DAY OF August, 1993.


  
United States District Judge



THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE UNITED STATES OF AMERICA

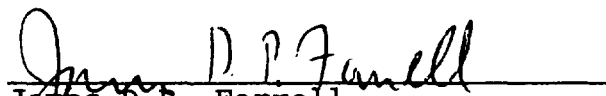
Date: 6-18-97



for Myles E. Flint  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division

U.S. Department of Justice  
Washington, D.C. 20530

Date: 6/22/93



James D.P. Farrell  
Environmental Enforcement Section  
Environment and Natural Resources  
Division

U.S. Department of Justice  
Washington, D.C. 20530

Date: MAY 20 1993



Patrick M. Tobin  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region IV  
345 Courtland Street  
Atlanta, Georgia 30365


OF COUNSEL:

Robert Caplan, Esq.  
U.S. Environmental Protection  
Agency, Region IV

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE FORD MOTOR COMPANY:

Date: 3/22/93

  
\_\_\_\_\_  
J. M. Rintamaki  
Assistant Secretary

Agent Authorized to accept service on Behalf of Ford Motor Company:

Name:	<u>J. A. Courter</u>
Title:	<u>Secretary</u>
Address:	<u>Ford Motor Company</u>
	<u>The American Road</u>
	<u>Dearborn, MI 48121-1899</u>



THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Lee's Lane Superfund Site.

FOR THE DOW CORNING CORPORATION:

Date: Feb. 18, 1993

David E. Dearing

Agent Authorized to accept service on Behalf of Dow Corning Corporation:

Name: David E. Dearing, Esq.  
Title: Cromer, Eaglesfield & Maher  
Address: 1500 Market Tower  
10 West Market Street  
Indianapolis, IN 46204-2968